S.B.Civil Writ Petition NO.4018/2002

Chuna Ram

vs

Board of Revenue, Rajasthan Ajmer & Ors.

DATE OF ORDER : - 7.2.2005

HON'BLE MR. PRAKASH TATIA,J.

Mr. Sugan Mal Parihar, for the petitioner.
Mr. C.R.Jkhar, for the respondents.

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Heard learned counsel for the parties.

According to learned counsel for the petitioner, the agricultural land of Khasra no.535 measuring 170.15 Bigha and land of Khasra no.534 measuring 1 Bigha was originally belonging to Sama Ram, father of the petitioner. The said Sama Ram died in the year 1973. In the year 1974, a mutation was entered in the name of petitioner and, without there being any right, title or interest in the agricultural land of one Tulcha Ram, his name was also entered in the revenue record. When the petitioner came to know about this fact, he preferred an appeal before the SDO, Pokaran in the year 1991. The appeal of the petitioner was dismissed by the Asstt. Collector-cum-SDO, Pokaran vide order dated 14.8.1996 (Annex.5) holding that the appeal has been filed after 11 years and 3 months, therefore, the appeal is liable to be dismissed. The petitioner preferred appeal against the order of the Asstt. Collector-

cum-SDO, Pokarn dated 14.8.1996 before the court of learned Addl. Divisional Commissioner, Jodhpur. The learned Addl. Divisional Commissioner, Jodhpur vide order dated 19th July, 1997 after holding that the first appellate court should not have dismissed the appeal on the ground of limitation. The Addl. Divisional Commissioner considered the merit of the case and set aside the mutation no.303 dated 14.8.1996 and directed that in place of deceased Sama Ram, the name of his only son Chuna Ram may be entered and since Chuna Ram sold half of his land to Lumba Ram, therefore, the name of Lumba Ram may be entered for half of the land. The respondent Tulcha Ram preferred revision petition before the Board of Revenue, which was allowed by the Board of Revenue vide order dated 11th April, 2002 after holding that the condonation of delay by the learned Addl. Divisional Commissioner on the ground that the appellant made out a case on merit, is wrong.

According to learned counsel for the petitioner, the revisional court should not have interfered in the order of the learned Addl. Divisional Commissioner, Jodhpur in a matter where the delay was condoned by the appellate authority. It is also submitted by learned counsel for the petitioner that Tulcha Ram was neither the son of Sama Ram nor any right, title or interest of Sama Ram passed on to Tulcha Ram, therefore, the entry made in the name of Tulcha Ram in the revenue record was absolutely illegal. When these facts were before the

court below, the court should not have set aside the order of the learned Addl. Divisional Commissioner. It is also submitted that the revenue suit is pending between the parties.

After going through the facts of the case, it appears that the original Khatedar tenant died in the year 1974, the mutation was opened in the year 1974 and appeal was preferred for the first time in the year 1991. The Board of Revenue while deciding the revision carefully considered the documents, particularly, the sale deed dated 21st Dec., 1984 by which the petitioner sold half of his land by registered sale deed. The Board of Revenue held that in view of the above facts, the petitioner had knowledge of the mutation in the year 1984, but he preferred the appeal after 11 years and 3 months.

It appears that the revenue suit is pending before the court between the parties. There the parties will be free to prove their right, title or interest in the property. The order passed in these proceedings is an order in a fiscal proceedings and the finding recorded in the said orders cannot come in the way of any of the party. Any finding recorded in the mutation proceedings are not binding upon the court while deciding the right, title or interest of the party in the agricultural land in a properly filed suit. Therefore, if the position as it exists today is maintained, no party is going to suffer because it is a mater of only

making entry in the revenue record. Apart from it, the appropriate order can be passed by the competent court in the suit. Therefore, this court is not inclined to interfere in the order. However, it is made clear that none of the order may effect the merit of the case of the parties in the suit, which is pending before the court.

In view of the above, the writ petition of the petitioner is dismissed.

(Prakash Tatia), J.

c.p.goyal/-